TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

IN RE:	Consolidated Waste Systems, LLC Map 035-00-0, Parcels 4.00 & 8.00 Commercial Property Tax Year 2006	))))	Davidson County

INITIAL DECISION AND ORDER

Statement of the Case

The Davidson County Assessor of Property ("Assessor") valued the subject property for tax purposes as follows:

Parcel 4.00

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$312,400	$900	$313,300	$125,320

Parcel 8.00

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$384,400	$0	$384,400	$153,760

Appeals have been filed on behalf of the property owner with the State Board of Equalization.

This matter was reviewed by the undersigned administrative law judge pursuant to Tennessee Code Annotated (T.C.A.) §§ 67-5-1412, 67-5-1501 and 67-5-1505. This hearing was conducted on July 26th, 2007, at the Davidson County Property Assessor's Office. Present at the hearing were Thomas Dean, the taxpayer, who was represented by Attorney Patricia H. Moskal of Boult, Cummings, Conners and Berry, PLC, Dean Lewis, Supervisor of the Division of Assessments for the Metro. Property Assessor and Attorney Jenny Hayes, Assistant Metropolitan Attorney.

Findings of Fact and Conclusions of Law

The subject properties consist of 76.87 acres of land, (parcel 4.00) and consist of 62.48 acres of land (parcel 8.00) presently classified as commercial property with local addresses of 1058 and 1082 Cinder Road (respectively) in Nashville, Davidson County, Tennessee.

The initial issue is whether or not the State Board of Equalization has the jurisdiction to hear the taxpayer's appeal. The law in Tennessee generally requires a taxpayer to appeal an assessment to the County Board of Equalization prior to appealing to the State Board of Equalization. T.C.A.§§ 67-5-1401 & 67-5-1412 (b). A direct appeal to the State Board of Equalization is only permitted if the assessor does not timely notify the taxpayer

of a change of assessment prior to the meeting of the County Board. T.C.A. §§ 67-5-508(b)(2); 67-5-1412 (e). Nevertheless, the legislature has also provided that:

> The taxpayer shall have a right to a hearing and determination to show reasonable cause for the taxpayer's failure to file an appeal as provided in this section and, upon demonstrating such **reasonable cause**, the [state] board shall accept such appeal from the taxpayer up to March 1st of the year subsequent to the year in which the assessment is made *(emphasis added).*

In analyzing and reviewing T.C.A. § 67-5-1412 (e), the Assessment Appeals Commission, in interpreting this section, has held that:

> The deadlines and requirements for appeal are clearly set out in the law, and owners of property are charged with knowledge of them. It was not the intent of 'reasonable cause' provisions to waive these requirements except **where the failure to meet them is due to illness or other circumstances beyond the taxpayer's control**. *(Emphasis added), Associated Pipeline Contractors Inc.,* (*Williamson* County Tax Year 1992, Assessment Appeals Commission, Aug. 11, 1994). See also *John Orovets, (*Cheatham County, Tax Year 1991, Assessment Appeals Commission, Dec. 3, 1993).

Thus, for the State Board of Equalization to have jurisdiction in this appeal, the taxpayer must show that circumstances beyond his control prevented him from appealing to the Davidson County Board of Equalization. It is the taxpayer's burden to prove that he is entitled to the requested relief.

In this case, the taxpayer timely requested a hearing before the County Board of Equalization to contest the reclassification issue. However, around the same time the hearings[1] were scheduled, he had been diagnosed with a Blood Cancer, multiple Myeloma, and was unable to make the times set by the County Board (taxpayer's exhibits #2 and #12). Based on the documentation received and reviewed, the Administrative Judge finds that reasonable cause does exist to satisfy the requirement of reasonable cause. See the Assessment Appeals Commissions' decision in the Appeal of Arthur E. Harris, Sr. (Davidson County, Tax year 2005, Final Decision and Order, February 7, 2006).

Now having determined that the State Board of Equalization has jurisdiction to hear this case, we will move to the other issues. At the time the taxpayer purchased these parcels of land in December of 2005 they enjoyed a classification of "Agricultural land" under the Greenbelt statute[2] . Mr. Dean, the taxpayer, made an unsuccessful attempt to have an application from the Tennessee Department of the Environment for a commercial landfill approved. Based on copies of the applications the Assessor believed that the property was being "held for use" as a land fill. The taxpayer had failed to file pursuant to

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[1] Documents supplied showed that at least two (2) hearings were set but each time the taxpayer became ill and had to be hospitalized. Although the hospital records were shown to the Court a synopsis was substituted for privacy reasons.

[2] Tennessee Code Annotated §§ 67-5-1001, et.seq., with an assessment ratio of 25%

the statute by March 1st of 2006 for the continued classification as Greenbelt.[3] As a result of his inaction on or about May 19, 2006, the taxpayer received a Notice from the Assessor reclassifying the subject properties (collective exhibit #4) as commercial properties (40% assessment ratio) and subjecting the properties to rollback taxes pursuant to T.C.A. § 67-5-1008. The taxpayer contests both the re-classification and the rollback assessment.

The taxpayer testified that the property was purchased by the Consolidated Waste Systems, LLC which was formed in the 4th quarter of 1999 or the 1st quarter of 2000. According to the taxpayer, "The sole and explicit purpose of this limited liability corporation is to get this project (land fill) up and running". The taxpayer agreed that property is being "held for use" for the "intended use" as a site for demolition solid waste disposal. However, in the interim he does consider the actual use as agricultural land[4]. The taxpayer went on to state that there are several contingencies that must be satisfied before the property can be used as a 'land fill' and he is unsure when or if those contingencies can be satisfied, fortunately or unfortunately, depending on the viewpoint, zoning is not one of the contingencies.

Ms. Hayes on behalf of the County argues that the Rollback and reclassification findings are proper as it is the taxpayer's stated purpose that the 'intended use' of the property is a commercial venture. The issue boils down to "actual use" vs. "intended use", the taxpayer argues it is the actual use and the Assessor argues it is the intended use. The assessor also states that the property was already zoned industrial/commercial in May of 2006 when the reassessment was made.

The Greenbelt statute under Tenn. Code Ann. § 67-5-1005 deals with the classification of agricultural land, it states:

> **(a) (1)** Any owner of land may apply for its classification as agricultural by filing a written application with the assessor of property by March 1 of the first year for which the classification is sought. Reapplication thereafter is not required so long as the ownership as of the assessment date remains unchanged. New owners of the land who desire to continue the previous classification must apply with the assessor by March 1 in the year following transfer of ownership. New owners may establish eligibility after March 1 only by appeal pursuant to parts 14 and 15 of this chapter, duly filed after notice of the assessment change is sent by the assessor, and reapplication must be made as a condition to the hearing of the appeal.
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> **(2)** The assessor shall determine whether such land is agricultural land, and, if such a determination is made, the assessor shall classify and include it as such on the county tax roll.

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[3] Taxpayer made a successful application for Greenbelt status on September 14, 2006 for tax year 2007

[4] Taxpayers' collective exhibit #8 (application for Greenbelt status) The 2006 applications for Greenbelt as to Parcel 4.00 shows that of the 76.87 acres 50 acres are designated as 'active farm use'; parcel 8.00 shows that of the 62.48 acres 40 acres are designated as 'active farm use'.

> **(3)** *In determining whether any land is agricultural land, the tax assessor shall take into account, among other things, the acreage of such land, the productivity of such land, and the portion thereof in actual use for farming or held for farming or agricultural operation. The assessor may presume that a tract of land is used as agricultural land, if the land produces gross agricultural income averaging at least one thousand five hundred dollars ($1,500) per year over any three-year period in which the land is so classified.* The presumption may be rebutted, notwithstanding the level of agricultural income by evidence indicating whether the property is used as agricultural land as defined in this part.
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> **(b)** An application for classification of land as agricultural land shall be made upon a form prescribed by the state board of equalization and shall set forth a description of the land, *a general description of the use to which it is being put, and* such other information as the assessor may require to aid the assessor in determining whether the land qualifies for classification as agricultural land.
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> **(c)** The assessor shall verify *actual agricultural uses claimed for the property during the on-site review provided under 67-5-1601. The assessor may at any time require other proof of use or ownership necessary to verify compliance with this part.*
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> **(d)** Any person aggrieved by the denial of any application for the classification of land as agricultural land has the same rights and remedies for appeal and relief as are provided in the general statutes for taxpayers claiming to be aggrieved by the actions of tax assessors or boards of equalization.

(Emphasis supplied)

Since Mr. Dean seeks to change the present classification of the subject property, he has the burden of proof in this administrative proceeding. State Board Rule 0600-1-.11(1).

In this case the County has the tools at its disposal to determine if the 'actual use' is in fact agricultural by its ability for an on-site review under T.C.A.§ 67-5-1005 (a)(3)(c). One can surmise that the County is satisfied since it has subsequently approved the prospective classification for these two parcels returning them to Greenbelt status.

As Administrative Judge Mark Minsky stated in Joyce B. Wright (Putnam County, Tax Year 1997, Initial Decision and Order):

> In concluding that subject parcels should remain on greenbelt, the administrative judge has rejected Putnam County's contention that *commercial zoning* somehow disqualifies the parcels from receiving preferential assessment. The administrative judge finds it inappropriate to remove a property from greenbelt simply because it is zoned commercially or that commercial development represents its highest and best use.

He went on to say:

> The administrative judge finds that the reasons underlying passage of the [G]reenbelt law are best summarized in the legislative findings set forth in T.C.A. §67-5-1002 which provides in relevant part as follows:
>
> The general assembly finds that:
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> (1) The existence of much agricultural, forest and open space land is threatened by pressure from urbanization, scattered residential and commercial development, and the system of property taxation. This pressure is the result of urban sprawl around urban and metropolitan areas which also brings about land use conflicts, creates high costs for public services, contributes to increased energy usage, and stimulates land speculation;
> (2) The preservation of open space in or near urban areas contributes to:
> (A) The use, enjoyment and economic value of surrounding residential, commercial, industrial or public use lands;
> (B) The conservation of natural resources, water, air, and wildlife;
> (C) The planning and preservation of land in an open condition for the general welfare;
> (ID) A relief from the monotony of continued urban sprawl; and
> (E) An opportunity for the study and enjoyment of natural areas by urban and suburban residents who might not otherwise have access to such amenities;
> (3) Many prime agricultural and forest lands in Tennessee, valuable for producing food and fiber for a hungry world, are being permanently lost for any agricultural purposes and that these lands constitute important economic, physical, social, and esthetic assets to the surrounding lands and to the people of Tennessee;
> (4) Many landowners are being forced by economic pressures to sell such agricultural, forest, or open space land for *premature development* by the imposition of taxes based, not on the value of the land in its current use, but on its *potential for conversion to another use;*

The administrative judge finds that the policy of this state with respect to Greenbelt type property is found in T.C.A. §67-5-1003 which provides in relevant part as follows:

> The general assembly declares that it is the policy of this state that:
> (1) The owners of existing open space should have the opportunity for themselves, their heirs, and assigns to preserve such land in its existing open condition if it is their desire to do so, and if any or all of the benefits enumerated in § 67-5-1002 would accrue to the public thereby, and that the taxing or zoning powers of governmental entities in Tennessee should not be used to force unwise, unplanned or premature development of such land;
> (2) The preservation of open space is a public purpose necessary for sound, healthful, and well-planned urban development, that the economic development of urban

> and suburban areas can be enhanced by the preservation of such open space, and that public funds may be expended by the state or any municipality or county in the state for the purpose of preserving existing open space for one (I) or more of the reasons enumerated in this section.. .
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> * * *

This policy was implemented to protect property owners from premature development and preserves an area of open space. The County is attempting to force a premature commercial classification on the subject property because the taxpayer has aspirations and dreams of one day developing his property. When faced with a similar issue Administrative Judge Mark Minsky stated in Putnam Farm Supply, (Putnam County, Tax Year 1997, Initial Decision and Order):

> . . . the administrative judge finds that the greenbelt law *does not prohibit a property owner from intending to eventually convert the use of a property from agricultural to commercial.* The administrative judge finds that rollback taxes are designed to cover such situations. . . . the administrative judge would assume that many owners of greenbelt property intend to sell it for commercial development *at some future time*. (Emphasis supplied)

It is the opinion of this administrative judge that the property is to be classified as to its actual use not speculative or intended use. As Judge Minsky noted, 'a property owner's *eventual* use does not disqualify a finding of Greenbelt classification'. The gap in the time frame that 'triggered' the reassessment was due not to a change in use by the taxpayer but a medical condition that prevented him from following the proscribed statutory time frame under the Greenbelt statute, as previously addressed in this Order. And as previously noted, the County has once again granted the same parcels the Greenbelt classification so they must be satisfied as to its actual use. Is there a reasonable excuse or explanation as to why the statute was not followed?

Another decision by Administrative Judge Mark Minsky (K.C. Lam Living Trust, Shelby County, Tax Year 2006) T.C.A. § 67-1-803(d)(2) , states:

> Any cause for a delinquency may be accepted as a good and reasonable cause that appears to the commissioner to justify a conclusion by the commissioner that the taxpayer has done everything the taxpayer could reasonably be expected to do as an ordinarily intelligent and reasonably prudent business person, and that clearly negates either *a willful disregard of the law or gross negligence.*

Judge Minsky also noted in the Lam case that 'although T.C.A. § 67-1-8003 (d)(2) is not applicable to the State Board of Equalization it constitutes persuasive authority insofar as the issue of reasonable cause is concerned. In this case Mr. Dean's illness prevented his compliance, not any willful disregard or gross negligence. There is no credible evidence that the current actual use of these parcels during the affected time frame was

anything other than Agricultural, therefore, the Greenbelt status for tax year 2006 is restored and rollback taxes are eliminated as to both parcels. The Administrative Judge finds that the present case is clearly distinguishable from situations wherein a taxpayer has begun to actually use the property in a manner inconsistent with agricultural use. For example, in Roger Witherow et.al, (Maury Co., Tax Year 2006), Administrative Judge Mark Minsky upheld the loss of the preferential assessment and levying of rollback taxes reasoning that "once subject acreage began being utilized exclusively for excavation purposes it was no long capable of being used for farming purposes", Initial Decision and Order at p.3.

Order

It is, therefore, ORDERED that the parties have fourteen (14) days to submit a stipulation on the Market and Use values of these parcels consistent with the findings of this Initial Decision and Order, if the parties are unable to stipulate they shall notify the administrative judge who will then set a hearing on the issue of value.

It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or

2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or

3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 23rd of August, 2007.

ANDREI ELLEN LEE
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: Patricia H. Moskal , Esq.
Jenny Hayes , Esq.
Jo Ann North, Assessor of Property